KELLEY DRYE & WARREN LLP
A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL ASSOCIATIONS

1200 19TH STREET, N.W.
SUITE 500
WASHINGTON, D.C. 20036
(202) 955-9600

NEW YORK, NY
LOS ANGELES, CA
MIAMI, FL
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM
HONG KONG

AFFILIATE OFFICES
BANGKOK, THAILAND
JAKARTA, INDONESIA
MANILA, THE PHILIPPINES
MUMBAI, INDIA
TOKYO, JAPAN

FACSIMILE
(202) 955-9792

DIRECT LINE (202) 955-9788
E-MAIL: tdaubert@kelleydrye.com

ORIGINAL

DOCKET FILE COPY ORIGINAL

September 1, 2000

RECEIVED
SEP 1 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

VIA COURIER

Ms. Magalie R. Salas
Secretary
Federal Communications Commission
445 12th Street, S.W.
Room TW-204B
Washington, DC 20554

Re: WT Docket No. 99-217; CC Docket No. 96-98

Dear Ms. Salas:

Edge Connections, Inc. ("Edge"), by its attorneys, hereby submits the following document for inclusion in the record in this proceeding:

1. Memoranda entitled "Explanation of Legal Issues in the License Agreement."

This document, which Edge received from a partner of BroadBand Office ("BBO"), discusses restrictive provisions in the BroadBand Office License Agreement, including a 12-month "Blackout" period during which BBO partners must restrict access to competitive telecommunications providers, and provides guidance to a BBO partner's employees on how to address requests by competitive telecommunications providers for building access. The license provisions and negotiation procedures described in the document are consistent with Edge's experience in the Atlanta market, where several different partners of BBO have told Edge that they could not enter into a building access agreement with Edge due to a "moratorium" imposed by BBO. This demonstrates the urgent need for regulation to promote non-discriminatory building access, and that reliance on market forces alone will be insufficient to ensure non-discriminatory building access, particularly where real estate entities own equity in telecommunications providers.

No. of Copies rec'd 012
List ABCDE

An original and two copies of this notice are provided.

Sincerely,

Todd D. Daubert
Counsel to Edge Connections, Inc.

TDD:slr

Enclosures

cc: Clint Odom
Peter Tenhula
Thomas Sugrue (WTB)
Joel D. Taubenblatt (WTB)
Eloise Gore (CSB)
Paul Noone (WTB)
Richard Arsenault (WTB)
Mark Schneider
Adam Krinsky
Jim Schlichting (WTB)
Lauren Van Wazer (WTB)
Cheryl King (CSB)
Mark Rubin (WTB)
Helgi Walker
Kathy Brown
Jeffrey Steinberg (WTB)
Leon Jackler (WTB)
Wilbert Nixon (WTB)
David Furth (WTB)

EXPLANATION OF LEGAL ISSUES IN THE LICENSE AGREEMENT

Restrictive Provision

The Broadband Office License Agreement is the same as the ARC agreement except that BBO imposes a 12-month "Blackout" period from September 23, 1999-September 22, 2000 restricting access to other telecommunication providers. If you enter into an agreement with Broadband, during this period the following guidelines apply:

1. Wireless companies, such as Winstar, Teligent, MCI, NEXTLINK and AT&T may bring their services into the building, however, we are recommending that Hines properties enter into negotiations only if they are strongly driven by **Owners or Tenants.**
2. For any telecommunication providers, use the updated Hines Telecommunications License Agreement, currently being drafted, that includes some new provisions gleaned from the ARC and Broadband language. This new agreement will be placed on our database when completed.
3. The Restriction does not apply to (1) any existing telecommunications agreements as of September 23, 1999; or (2) the addition of **one** other such agreement with a Broadband Office competitor, such as ARC, Cypress, OnSite Access or Urban Media or any other "building centric" provider. In other words, the agreement allows a building to have 2 similar, building centric providers: BBO and one other, in addition to any existing providers during the restriction period.
4. The EXCEPTION is that any telecommunications provider may bring service directly to a **tenant**-not the entire building-during the blackout. The switch from the provider must, in this case, reside in the tenant's space.

ALL deals must be routed to your Regional Vice President Operations for review and approval BEFORE execution, thus ensuring these guidelines are correctly interpreted.

For your information, the following is the blackout language from the Broadband license agreement, Section 6:

"No Agreement with Direct Competitor. Licensor agrees not to enter into any access agreement with any building centric provider of bundled voice and data telecommunications services to small and medium sized businesses (including Cypress, Onsite Access and Urban Media) with respect to any Tier One Property or Tier Two Property for a period of twelve months after September 23, 1999; provided that this Section 6 does not apply to (i) any existing agreements as of September 23, 1999 and (ii) one other such agreement with such a competitor (including Allied Riser Corporation)."

Existing Rooftop Management Agreements (applicable only if existing)
The License Agreement provides for the dedication of approximately 50 square feet on the building rooftop. Several buildings are currently subject to exclusive Rooftop Management Agreements which require that all leases for rooftop space be obtained through the rooftop manager and that a fee be paid to that manager for its services. Hines has agreed that BBO and/or ARC will not be directly responsible for this fee. While ARC and BBO will contract with the rooftop management company, any fees associated with the lease of the rooftop space will be deducted from the five percent of Gross Receipts that are payable to the building under the Telecommunications License Agreement between the building and ARC/BBO. Any remaining "net" revenue will then be paid by ARC or BBO to the building.

The need for ARC or BBO to obtain rooftop space is usually confined to suburban locations where fiber is not laid for connections and the company must transmit their signal via an antenna or satellite dish. Therefore their need for rooftop space is very limited. In most metropolitan locations rooftop space is not required at this time, however ARC and BBO have the right to request the space at a future time, if additional services are made available only via antenna or dish.

Notice of Non-Renewal/Cancellation
It is recommended that, when appropriate, notice is given to terminate any exclusive agreement or that management negotiates an exclusion for itself to accommodate ARC's and BBO's rooftop space requirement. Critical termination dates in existing agreements should be carefully researched and noted.

Cable Television Exclusive Agreement
If an exclusive agreement exists, it is recommended that the Cable Television Agreement be reviewed for specific restriction language, as BBO and ARC are not considered Cable Television providers and are not licensed as such by the FCC.
It is further recommended that, when appropriate, notice be given to terminate any exclusive agreement.

<u>CERTIFICATE OF SERVICE</u>

I, Gledys Y. Lovato, hereby certify that, this 1st day of September 2000, I caused a copy of the foregoing "Ex Parte" to be served via hand delivery to the following:

William E. Kennard, Chairman
Federal Communications Commission
445 12th Street, S.W., 8B201
Washington, D.C. 20554

Susan Ness, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8B115
Washington, D.C. 20554

Harold W. Furchtgott-Roth, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8A302
Washington, D.C. 20554

Michael K. Powell, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8A204C
Washington, D.C. 20554

Gloria Tristani, Commissioner
Federal Communications Commission
445 12th Street, S.W., 8C302
Washington, D.C. 20554

Kathryn Brown, Chief of Staff
Office of the Chairman
Federal Communications Commission
445 12th Street, S.W., 8B201
Washington, D.C. 20554

Clint Odom, Legal Advisor
Office of the Chairman
Federal Communications Commission
445 12th Street, S.W., 8B201
Washington, D.C. 20554

Mark Schneider, Senior Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
445 12th Street, S.W., 8B115
Washington, D.C. 20554

Helgi Walker, Sr Legal Advisor & Chief of Staff
Office of Commissioner Furtchgott-Roth
Federal Communications Commission
445 12th Street, S.W., 8A302
Washington, D.C. 20554

Peter Tenhula, Senior Legal Advisor
Office of Commissioner Michael Powell
Federal Communications Commission
445 12th Street, S.W., 8A204C
Washington, D.C. 20554

Adam Krinsky, Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
445 12th Street, S.W., 8C302
Washington, D.C. 20554

Thomas Sugrue, Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 3C252
Washington, D.C. 20554

Jim Schlichting, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 3C254
Washington, D.C. 20554

Jeffrey Steinberg, Deputy Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4C222
Washington, D.C. 20554

Joel D. Taubenblatt
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4A260
Washington, D.C. 20554

Lauren Van Wazer
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4A223
Washington, D.C. 20554

Leon Jackler
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4B145
Washington, D.C. 20554

Eloise Gore
Cable Services Bureau
Federal Communications Commission
445 12th Street, S.W., 4A726
Washington, D.C. 20554

Cheryl King
Cable Services Bureau
Federal Communications Commission
445 12th Street, S.W., 4C738
Washington, D.C. 20554

Wilbert Nixon
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4A265
Washington, D.C. 20554

Paul Noone
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4A133
Washington, D.C. 20554

Mark Rubin, Legal Advisor
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 3C300
Washington, D.C. 20554

David Furth, Senior Legal Advisor
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 3C217
Washington, D.C. 20554

Richard Arsenault
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W., 4A267
Washington, D.C. 20554

And via first-class mail, postage prepaid, to:

Rachelle Chong
General Counsel and VP Government Affairs
Greg Zemanick
Real Estate and Public Policy Counsel
BroadBand Office
951 Mariner's Island Boulevard, Suite 700
San Mateo, CA 94404

Gledys Lovato

Gledys Y. Lovato